

judgment are the Control of Rent Ordinance, 1947, and the Control of Rent Ordinance, 1953; the latter came into force on the 20th July, 1953 and is now Cap. 242 in the 1955 Edition of the Laws of the Colony of Singapore. The judgment is as follows:

"These are two actions by former tenants against a landlord. The defendant is the owner of a house of which the standard rent in 1939 was \$100 p.m.

After the war the premises were let separately as two dwellings. One part was let to the plaintiff in Suit 1362 of 1954 from 1st June, 1953 at \$300 p.m.; the other to the plaintiff in Suit 1363 of 1954 at \$350 p.m.

The contention of the plaintiffs is that the Courts should apportion the standard rent between the two parts of the house and they seek in each case to recover the difference between such part of the standard rent (plus adjustments) and what they have actually paid. I think this is misconceived. Having regard to the definitions of 'premises' and 'tenancy' in both Ordinances it appears to me that after the sub-division each part became 'premises' for which the standard rent was the rent at which they were first let. (See *Vaughan v. Shaw*, [1945] 1 K.B. 400, the converse of the present case. See also *Tan Ah Seah v. Teo Kai Min*, [1954] M.L.J. 50). We do not know what that was but there is no evidence that it was less than the rate paid by the plaintiffs.

In the circumstances there must be judgment for the defendant in each case on the claim, and in Suit No. 1362 of 1954 on the counterclaim, with costs in each case."

For the above reasons I come to the conclusion that the plaintiffs did not pay the defendants any sum in excess of the rent which may lawfully be received under the provisions of section 3 and that there is nothing they are entitled to recover under section 3(4) of the Control of Rent Ordinance (Cap. 242).

The plaintiffs' claim is also made under section 22 of the same Ordinance. This section reads as follows:

"Where the tenant of any premises to which this Ordinance applies has sublet any part of such premises then the tenant or any sub-tenant of that or of any other part of such premises may at any time apply to the Board to apportion the rent of the whole premises as between the tenant and all the sub-tenants of any part or parts of the whole premises and to determine the rent of all or any one or more part or parts of the whole premises sublet to any and every sub-tenant thereof and the Board shall thereupon make such an apportionment and determination:

Provided always that the total of the rents payable to the tenant by all the sub-tenants shall not in the aggregate exceed one hundred and ten per centum of the rent of the whole premises after making an apportioned reduction in respect of any part of the premises retained by the tenant or not sublet by him:"

It seems to me that the proviso on which the plaintiffs rely lays down a principle to be observed by the Board. It does not provide for the recovery of any sum paid by the tenant to the landlord. In my view section 22 does not support the plaintiffs' claim in any way.

In the result, I give judgment for the defendants with costs.

*Judgment for the defendants.*

Solicitors: S. K. Lee; Allen & Gledhill.

## A **QUAH SIN KHENG v. MOUNT ERSKINE POULTRY FARM**

[O.C.J. (Hepworth J.) January 31, 1963]

[Penang — Summons-in-Chambers No. 14 of 1963 in Civil Suit No. 229 of 1961]

*Practice and Procedure — Change of solicitors — Change caused by death of solicitor on record — Consent — Form — R.S.C., O.7 rr.2(2) and 3, First Schedule Form No. 8 — Non-compliance with.*

Form 8 to the First Schedule of the Rules of the Supreme Court, 1957 provides in case of a change of solicitors for the new solicitor to make the application and for the old solicitor to consent. If the old solicitor is dead the person to consent is the party himself. Then all persons concerned have been parties to the notice and are bound by it.

### SUMMONS-IN-CHAMBERS.

*Miss W. A. Goh* for the plaintiff.

*Jag-Jit Singh* for the defendants.

*Cur. Adv. Vult.*

D **Hepworth J.:** In this Summons-in-Chambers the defendants applied that the Memorandum of Change of Solicitors entered on behalf of the plaintiff should be set aside on the ground that the form did not comply with Order 7 rule 2(2) of the Rules of the Supreme Court, 1957.

E The Memorandum complained of read as follows:—

"In the Supreme Court of the Federation of Malaya.

In the High Court at Penang.

Civil Suit No. 229 of 1961.

In the Matter of Civil Action No. 99 of 1961 in the Sessions Court at Georgetown, Penang.

Between

Quah Sin Kheng ... *Plaintiff.*

— And —

Messrs. Mount Erskine Poultry Farm (sued as a firm) ... *Defendants.*

To:

The Senior Assistant Registrar,  
Supreme Court,  
Penang.

G Enter Messrs. G. H. Goh & Co. as Solicitors for Quah Sin Kheng the abovenamed Plaintiff in this Suit in place of the late Mr. Lee Thean-Chu formerly of No. 18, Bishop Street, Penang.

Dated this 14th day of November, 1962.

H Address for service of Messrs. G. H. Goh & Co., Room 303, O.C.B.C. Building, Beach Street, Penang.

(Signed in Chinese characters)

Quah Sin Kheng."

Paragraph (2) of rule 2 provides that notice of any change of solicitor shall be in Form 8 in the First Schedule to the Rules and shall be filed. Form 8 reads as follows:—

"Form No. 8

Change of Solicitors.

(General Heading)

To the Registrar,

Enter my name as solicitor for the abovenamed (plaintiff or defendant) in this Suit in place of Mr.

Dated the                      day of                      , 19

Address for service

I consent.

(Signed)

Solicitor on record.

(Signed)

Solicitor for

Messrs. G. H. Goh & Co. only came into this matter in November, 1962, on the death of Mr. Lee Thean-Chu who previously had been the solicitor for the plaintiff. The purpose of the Memorandum was therefore to get Messrs. G. H. Goh & Co.'s name on the record as solicitors for the plaintiff in place of Mr. Lee Thean-Chu. I do not think it affects the issue whether the particular document is referred to as a notice of change of solicitor or a memorandum of change of solicitor.

Mr. Jag-Jit Singh, who appeared for the defendants, objected to the form of the Memorandum for the following reasons:—

- (1) The Memorandum was signed by the plaintiff whereas it should have been signed by or on behalf of Messrs. G. H. Goh & Co.;
- (2) the plaintiff should have signed where it says "I consent" in the form. He had not done so; and
- (3) the form used stated "Enter Messrs. G. H. Goh & Co. as Solicitors" whereas it should have read "Enter my name as Solicitor" or "Enter our name as Solicitors".

He submitted that as the Memorandum was not in Form 8 as required under Rule 2 the provisions of Rule 2 had not been complied with and accordingly Messrs. G. H. Goh & Co. were not on the record as solicitors for the plaintiff.

Miss Goh on behalf of the plaintiff argued that Form 8 required to be signed by the old solicitor, but as in this case the old solicitor was dead this was impossible. She maintained that in the circumstances of a case like this Form 8 was not the appropriate form and that accordingly, as there was no provision in our Rules for the form which the Memorandum should take, the English procedure applied. She submitted that the Memorandum filed on behalf of the plaintiff was as in Form 3 appearing at page 4 of *Chitty's Queen's Bench Forms*, 18th edition, and was the appropriate form in the circumstances.

In reply Mr. Jag-Jit Singh submitted that even if Miss Goh was right and the English Rules should apply, which he did not agree, the appropriate form would be Form 4 at page 5 of *Chitty* and not the form which was used.

It should be noted at the outset that Rules 2 and 3 of Order 7 of our Rules are not the same as the English Rules. Paragraph (1) of Rule 2 of Order 7 provides that a party suing or defending by a solicitor may change his solicitor in any cause or matter without an order for that purpose but unless and until notice of any such change is filed and copies of the notice are served

A in accordance with paragraphs (2) and (3) of that Rule the former solicitor is to be considered the solicitor of the party till the final conclusion of the cause or matter. That notice has to be in Form 8 as provided in paragraph (2) of that Rule.

B Rule 3 of Order 7 provides that where a solicitor who has acted for a party in a cause or matter has died and the party has not given notice of change of solicitor or notice of intention to act in person in accordance with the provisions of Rule 2 any other party to the cause or matter may apply to the Court for an order declaring that the solicitor has ceased to be the solicitor acting. This Rule clearly envisages that where C a solicitor has died the party for whom he was acting should give notice of change of solicitor or notice of intention to act in person in accordance with the provisions of Rule 2. To comply with the provisions of Rule 2 the form of the notice must be that referred to as Form 8.

D The Rule Committee has specifically modified Rules 2 and 3 in relation to the corresponding Rules in the *Annual Practice*, 1957, in order to accord with local conditions. They have also specifically modified the form of notice of change of solicitor, appearing in Appendix B, Part II, Nos. 30-32, of the *Annual Practice*, 1957, also, I think it is reasonable to infer, to accord with E local conditions and requirements. The purpose of a notice in the form in Form 8 being prescribed is, it seems to me, to ensure that the notice is signed by all the persons concerned.

F It is clear that the exact wording of Form 8 cannot be followed in the present case because it provides for the solicitor on the record signing and where the solicitor has died this cannot be done. The form can however be modified with a minimum of alteration, so that all the information which it is the intention should be given by the notice in Form 8 is given to the Court and G every other party to the cause or matter by all the persons concerned.

H Form 8 provides for the new solicitor to make the application and for the old solicitor to consent. If the old solicitor is dead the obvious person to consent is the party himself. Then all the persons concerned have been parties to the notice and are bound by it.

In the form used by the plaintiff there is nothing to confirm that the firm of solicitors has in fact been retained and has agreed to act.

I In view of the fact that the plaintiff's Memorandum has not complied in any way with Form 8, I am of the view that it is void and of no effect and that accordingly Messrs. G. H. Goh & Co. are not upon the record as solicitors for the plaintiff.

Solicitors: G. H. Goh & Co.; Jag-Jit Singh.